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Brief
Provincial Building and Construction Trades Council of Ontario

INTRODUCTION

This Brief, with its combination of points dealing with the Workmen's Compensation Act, is presented on behalf of the affiliated Local Unions and Building Trades Councils in the Province of Ontario and is representative of the views and thinking of the Building Tradesmen in Ontarios largest industry.

We do not raise a great number of points, but we deal at length with the major problems facing us and the injured workmen which need immediate attention.

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B R I E F

TO BE PRESENTED TO:-

THE HONOURABLE GEORGE A. McGILLIVRAY, COMMISSIONER,
RE: COMMISSION ESTABLISHED IN CONNECTION WITH THE
WORKMEN'S COMPENSATION ACT.....

POINT ONE:

E A R N I N G S

One of the fundamentals enunciated by Sir William Meredith was that during periods of disability a workman should receive a percentage of his earnings. When Sir William made his report in 1914, stating an annual salary limit of $2,000.00, he did so to differentiate between the employer and the work people. Bear in mind that most employers in those days were persons actually directing company policy and were in the main entrepreneurs. Bear in mind also that the wage rate for skilled machinists at that time, as an illustration, was approximately 11¢ per hour.

It is our contention that workmen during periods of total temporary compensable disability should receive a minimum of 80% of actual earnings. Because so many work people earn in excess of $6,000.00 per year, at the present time their compensation payments are, in essence, only forty, fifty or possibly fifty-five percent of earnings.

POINT TWO:

W A I T I N G P E R I O D

It is our contention that there is no longer any necessity of a waiting period before a workman is entitled to the payment of compensation. The present Act provides for calender in the so-called waiting period and in many instances this must only represent one day. It is recognized that by providing entitlement to the workman for compensation payments beginning with the first shift following his compensable accident

would speed up the handling of clims, avoid many enquiries and in essence would reduce overall costs. In addition there is no justifiable reason why a workman should lose three full days' salary, as at present, because of injuries resulting from an accident which occurred through no fault of his own.

POINT THREE:

SECTION 41 - T E M P O R A R Y P A R T I A L D I S A B I L I T Y

A workman is on a payroll and employed at the time of his accident, otherwise he would have no entitlement to benefits under the Act. The injuries resulting from the accident have taken him completely outside the labour force and it is our contention that he should be entitled to full compensation payments until he is returned to employment or until he has sufficiently recovered to return to the labour force and therefore have entitlement to the facilities of the National Employment Service and payment of Unemployment Insurance benefits.

This Section of the Act is most unjust in that the Board rules a man is 25% or 50% temporarily partially disabled and reduces his payments accordingly. The National Selective Service will not attempt to locate employment for him because, according to them and based on the Board's findings, he is still partially disabled. The fact that he does not qualify for National Employment Services also bars him from the payment of Unemployment Insurance benefits.

Further to this, on other occasions an injured workman is informed that he has recovered sufficiently from his injuries to do light work. In the Building and Construction Industry there is no such thing as light work.

When an injured workman in this position is disabled he is totally disabled and he reamins totally disabled until the Workmen's Compensation Board changes his status. They can only do that by completely retraining him to do the so-called light work. But instead the workmen's Compensation Board continually tells him to seek this light work, which

he cannot find, but they just will not take this into consideration and they make no attempt to find out if there is any light work in this injured workman's trade available to him. While this is going on the injured workman is cut off from his Compensation payments and this is most unjust.

POINT FOUR:

C A L C U L A T I O N O F E A R N I N G S

The present system of calculating earnings of the injured workman over a period of twelve months prior to his injury is an injustice to the injured workman because of the ups and downs of employment that we have in the Building Construction Industry.

The twelve month period preceeding the accident could be a very slow period in construction and the workman's earnings would be calculated during this slow period and his weekly compensation payments would be figured accordingly, thereby giving the injured workman a very inadequate weekly payment to subsist on.

We feel this period of calculation of earnings should be shortened from twleve months to the previous four weeks. Thus giving the Board a more accurate understanding of the workman's earning capabilities prior to his accident and, insuring that the workman will receive the right percentage of the salary he could normally earn if work was available.

POINT FIVE:

P A Y M E N T S T O D E P E N D A N T S

By setting a statutory amount of pension for dependants legislation, in our opinion, is in conflict with the fundamentals established by Sir William Meredith in that payments should bear a relationship to the man's earnings, so the workmen's family will not be forced to accept a lower standard of living than that which he has established by reason of his skills and wages.

Let us make our position very clear that we do not think a pension of less than $100. a month can be justified any place in this affluent province. We do say, however, that while a widow in receipt of $100.00 monthly pension may be able to exist quite comfortably in Birdseye Centre, $100.00 a month would not pay either house rent nor taxes in any of our metropolitan areas.

We contend that a widow entitled to benefits under Workmen's Compensation legislation should receive at least 60% of her late husband's earnings as long as she remains a widow. In this way she will be able to maintain herself at a level close to that which she had been accustomed by virture of her late husband's earnings. We feel that dependant children should be provided with a monthly allowance sufficient to feed and clothe them as well as to provide the cost of their education. The widow, by reason of obtaining a minimum of 60% of her late husband's earnings, would be able to provide shelter for her dependant children.

Most established pension schemes recognize and accept such a principle since most have provisions that should the husband die either while on pension or while in service entitling him to a pension, the widow would receive a minimum of half the monthly pension to which her husband was entitled.

POINT SIX:

RELATIONSHIP WITH THE BOARD AND SENIOR OFFICERS

#1 - (a) We are concerned over the increasing number of reports from our respective Business Representatives of our affiliated locals that they cannot obtain satisfactory information and advise relative to compensation claims from our Labour Representative on the Workmen's Compensation Board.

Previously, representatives could obtain information without seeing the file from Board Members or Senior Staff in whom they had trust, so they were in a position to properly advise the workmen what was required of him to show entitlement to benefits. This system built a mutual trust

in the past between workman, the employer and the Board.

Adminstrative procedures worked so well that for the first time in the history of the Workmen's Compensation in either the United States or Canada, organized management and organized labour publicly went on record as being opposed to any changes in administrative procedures.... (This could be found in the Report of Mr. Justice Roach of 1952.)

#1 - (b) It is our contention that when Sir William Meredith specifically set out in his report that one of the Commission members must be from the ranks of the working people, he did not want to create a bureaucracy but rather a more informal type of Commission where the injured work people or their representatives could discuss the problems involving the men's accident and subsequent disability.

Mr. Justice Middleton, in his inquiry in 1930, did not find any reason to alter procedures which had been in effect from 1915 to that date, where access directly to the Board Members was a recognized procedure. In 1937 the composition of the Board changed and it became a predominantly medical Board -- two Commissioners being members of the medical profession and the Chairman a member of the employers through the Canadian Manufacturers Association. The public image of the Board immediately declined and neither the work people nor their representatives had access directly to the Board and because of this had no knowledge as to whether the workman had or had not entitlement under the provisions of the Act. This left the representatives no other recourse but to instruct their members to keep appealing every rejected case and to take these matters into the political arena. For the first time in the history of this province the Board and its handling of cases were debated from public platforms during provincial election campaigns.

Ontario is the only Workmen's Compensation Board in Canada where a workman, Members of Parliament and Trade Union Representatives can not discuss a case with a Board Member.

Prior to 1965 union and other representatives, including Members of Parliament, and the injured workman himself, had direct access to the Board. We were never allowed to peruse Board files, but in claims that failed on non-medical grounds the workman's story was reviewed and in many instances elaborated on; not that there was a change of story but merely because a workman, for the first time, realized just what was required of him. We used to be advised to have the workman return to his home and set out the additional points in writing and, if at all possible, to have this corroborated by any of his fellow-workmen and if necessary by the employer himself, and when this was done to forward this additional information directly to the Board's Claims Department. As representatives of the man we told him unless he could obtain this required information we could not ask the Board to process his claim further.

If medical opinions were involved, we would suggest to the man that he go back to his attending doctor and discuss the matter with him and if the attending doctor was still of the opinion that there was either a direct causual relationship between the disability and the accident or there was a possiblity of a relationship, to have the doctor discuss this with the Board's Medical Department and ask that the Board make arrangements for a further independent medical examination.

I am certain that representatives of work people at that time, as do representatives today, did not want an injured workman to obtain anything not specifically provided for under the legislation.

The Board's business is sort of a mail order business. I am sure that you, Mr. Commissioner, will appreciate how difficult it is for people to write down a proper description of actually what happened in their employment to bring on the disability. Unless there is some indication as to where the claim failed then the workman has no other recourse but to keep appealing and to harbour distrust of the Board, being convinced that he has been most unfairly dealt with.

At this point it may be well to remind you that in our opinion, it is impossible for any individual or group to bring pressure on the Board to allow a fraudulent claim. Before the Board can begin adjudication of a claim it must have the workman's signed statement, setting out particulars of his accident and there must be a separate signed statement from the employer setting out basically the same set of facts. If the employer's statement differs to any extent from that sent to the Board by his workman, the Board usually conducts an investigation or a review of some type to determine the facts, Finally, the doctor must set out in writing his medical opinion showing a direct causal relationship between the disability and the accident reported. It must be obvious to you, Mr. Commissioner, that by talking to a Board Member or senior official you could not possibly fix a claim. I am sure if you will obtain the record of appeals from the Board it will show that the number of appeals was diminishing while the number of claims were increasing.

Under the former system there was a group of highly trained claims personnel who participated in many labour seminars and other educational classes dealing with Workmen's Compensation. This was a tremendous help to the Board in that it gave to a great many people at the grass roots level a knowledge of the Act and what was required. Personal contact with a workmen in his own environment built up trust and confidence in the Board that justice would be rendered in the adjudication of a claim.

Invariably at these meetings would be a few whose own claims had been rejected. Following the meeting the person from the Board would sit down with the workman and get his side of the story and he would be given the assurance that his file would be reviewed by the Claims Officer in light of the additional information and he would be advised directly as to the next step that should be taken in the handling of his case.

At the present time there is one person addressing labour meetings and enquiries are dealt with by a special group who are known to a very few trade union officials and are not known to the rank and file membership. It is the concensus of our membership that these staff members

are merely routinely going over the man's file and forwarding a letter justifying the Board's earlier decision. There is no personal contact whatsoever and the workmen is of the opinion that justice has not been rendered.

Under the circumstances we, as representatives, have no other recourse but to advise all of our membership to appeal every rejected claim right up to a Board hearing.

POINT SEVEN:

CLAIMS HANDLING PROCEDURE PRIOR TO MARCH OF 1965

#1 - (a) Having in mind the statements made in the Legislature, as reported in the Legislative Hansard of June 20th, we would respectfully request the Commissioner to make an exhaustive study of the claims handling procedures. From our experience in dealing with the Board over the past many years we cannot see where any change was made in the adjudicating of claims.

It is our opinion that a number of additions were made to the staff and titles changed which have lowered the efficiency of that department rather than take care of any increased volume. We believe that the oppposite has been the case. Never have we had so many compleints from our membership concerning long delays, both in the adjudication of claims and in getting our payments.

#1 - (b) Prior to March 1965 the claims handling procedure was as follows ..... If a Claims Officer in the initial adjudication was not able to determine entitlement to benefits and therefore it would be necessary to reject the claim, the file had to go to a committee of thres. These three were senior claim specialists who sat above the calims adjudicating group. The claims to be rejected by a claims officer were transferred to these three at almost hourly intervals. This provided for an automatic speedy review by a much more experienced and senior claims officer.

His review was to make certain that all pertinent information was on file, that no points had been overlooked by the adjudicator. If he was in agreement with the rejection of the claim then the claims officer handling the file initially sent such a notice to th workman. If, however, this panel felt a local investigation should be held, a further medical examination arranged, or that the points at issue could be determined only by a hearing with all parties being under oath, then such arrangements were made immediately.

If the workman felt his case should be appealed, a written notice was all that was required. This would take his case immediately to the Rievew Board who would review the evidence, order such enquiries it felt were necessary and make a decision on the basis of facts then available; or it could immediately schedule a hearing to determine the credibility of the persons involved. Any subsequent appeal was to the Board itself.

It has been our experience that we could get cases appealed through the Review Board in a matter of two to three weeks. The review group of three above the claims adjudicators provided an automatic almost instant review. Since March of 1965 a claims officer must make his decision on the basis of the information then available to him. A notice then goes to the man and he is told he can appeal. He must then write to the Review Committee and ask for a review. This usually takes about three to four weeks from the date of the accident. The Review Committee's decision is communicated to the man by letter and in this he is told he may have a summary of the evidence if he so desires. This requires that the workmen write another letter to the Review Committee making this request. Our experience has been that it usually about ten days before the workmen is in receipt of this.

These summaries, we believe, are loaded against the workmen, are usually composed of highly technical medical terms, the workmen is at a loss to know what to do in filing his written appeal, and usually brings the matter to his union representative, a member of Parliament, or some

other such individual. About the only advice we can give him is to take the summary back to his doctor and have the matter explained.

He must then write requesting an Appeal Tribunal hearing and if he is lucky, this may be set a month or six weeks after he has forwarded his request. He must then go through the same procedures in asking for a summary of the evidence and a copy of the transcript and then seek advice as to whether he should appeal to the Board.

This is a long formal process and does nothing to improve the Board's image and because of the lengthy delays puts the man and his family in a most embarrassing financial position and actually results in privation and hardship.

These many complaints together with the great increase in the number of appeals make it apparent to us that the Board's administrative costs must have increased tremendously with a decline rather than an improvement in the efficient handling of claims.

Until the institution of the so-called new claims system, a workman always knew where his claim failed to meet the requirements of the Act -- on either medical or non-medical grounds. If the former was the case we could advise the workman to either return to his doctor for a further appraisal of his condition or we could ask the Board directly to arrange to have one of its Medical Department examine the man or request a referral to an independent specialist of the Board's choosing.

If non-medical points were involved we could always advise the man to discuss particulars of his accident with fellow-workmen, with his supervisor, and also with the employer to see if an accident could be established. If we were unable by this procedure to establish an accident then we always advised our membership that there was no use appealing the matter further to the Board.

We would ask the Commissioner to go over some of the summaries of evidence supplied to the workmen as read to the Legislature on June 20th, 1966. I am sure, Mr. Commissioner, you will agree that the

average workman would not have the slightest idea as to what the medical problem was and is in no position to write out his reasons for appeal. These present procedures only tend to confuse the workman and involve long drawn-out and costly appeal procedures, leaving the workman most bitter because of the formalities involved, and with the belief, in view of the language used by the Board, that he is having something put over him.

Again referring to the Legislative Hansard of June 20th, 1966, the Honourable Minister of Labour Mr. Rowntree quotes at length a statement by Mr. Justice Tysoe extolling the new procedures. The Royal Commissioner should be asked to investigate the extent of Mr. Justice Tysoe's enquiry, if any.

The facts in this statement are as follows .... Chief Justice Alex C. DesBrisay was appointed by the B.C. Government to conduct a Royal Commission Enquiry into the Act and the administration of the Act in that Province. The British Columbia Federation of Labour suggested to the Chief Justice that he should make a detailed analysis of the operations of the Act in Ontario, since the Ontario Act had complete endorsation of all phases of the organized labour movement. It is our understanding that the Chief Justice called on the Ontario Board late in the fall of 1964. Unfortunately he died suddenly following his return to British Columbia and without completing his notes on the Ontario administrative system.

Mr Justice Charles W. Tysoe was appointed to complete the Royal Commission Enquiry begun by Chief Justice DesBrisay and because there were no notes available to Justice Tysoe concerning the Ontario operations the Justice visited the Ontario system late in May, 1965. The new appeal system had been in effect less than six weeks at that time, so there was no possibility of Mr. Justice Tysoe weighing the results of the new system against the procedures formerly in effect.

Mr. Justice Tysoe did not contact representatives of organized labour, organized management, nor as far as we can learn organized employers;

so there is nothing to justify the Board's propoganda that the eminent jurist is in full support of the new procedures.

C O N C L U S I O N

In conclusion we feel that the seven points raised need the every consideration of this Royal Commission in order to do justice to the injured workman because we are of the concerted opinion that the basic philosophy of the Board has shifted in the last seventeen months, from March 1965 to the present time, from a compassionate flexibility once described as "justice with humanity", to a much tougher rigidity in its appeal system and in its approach to the injured workman. This definitely has caused much concern in our ranks.

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